

AMENDED IN ASSEMBLY APRIL 18, 2002

AMENDED IN ASSEMBLY APRIL 4, 2002

CALIFORNIA LEGISLATURE—2001–02 REGULAR SESSION

ASSEMBLY BILL

No. 2268

Introduced by Assembly Member Horton
(Coauthor: Assembly Member Firebaugh)
(Coauthor: Senator Polanco)

February 20, 2002

An act to amend Sections 18934, 19574, and 19582 of, and to add Sections 18941, 19574.3, 19707, and 19708 to, the Government Code, relating to civil service.

LEGISLATIVE COUNSEL'S DIGEST

AB 2268, as amended, Horton. State employees: dismissed employees.

(1) Existing law provides that every applicant for an examination for a civil service position shall file a formal signed application with specified information. Existing law provides that the State Personnel Board may refuse to examine, or after examination, may refuse to declare as eligible, or may withhold or withdraw from certification, prior to appointment, persons within specified categories, including persons who have been dismissed from civil service.

This bill would require that the civil service application form include a statement, as specified, that a person dismissed from state civil service is required to request and receive permission from the executive officer of the board prior to submitting the application.

(2) A board regulation implementing existing law restricting a dismissed employee from applying for a civil service examination provides that a dismissed employee may not take a civil service examination without the consent of the executive officer of the board. The regulation authorizes the executive officer to grant a continuing waiver of this requirement to an employee who subsequently attains permanent status in civil service.

This bill would require the board to provide, by rule, for grant of a blanket waiver of this requirement that would allow a dismissed employee who meets standards to be determined by the board to apply for any civil service examination so that the employee would not need a separate waiver for each examination. It also would require the board to prepare a written notice that explains the effect of dismissal from state employment on eligibility to take civil service examinations and the process by which a dismissed employee can compete in a civil service examination, and to provide a copy of this notice to any employee or former employee who has a pending complaint or action alleging discrimination against a state employer. It would require the board, notwithstanding any other provision of law, to allow a dismissed employee who has applied for, or taken, a civil service examination without obtaining the consent of the executive officer, and who would have been granted consent, to take the examination, or, if the examination already has occurred, to maintain his or her placement on the ranking list.

(3) Existing law provides for a state employer to take an adverse action, defined to include dismissal, demotion, suspension, or other disciplinary action, against a civil service employee and requires that a notice of adverse action provided to the employee contain specified information. Existing law sets forth administrative procedures for an adverse action, including requirements for initial review hearings, known as Skelly hearings, and a requirement that, following a hearing before the board, the board issue a decision with specified findings.

This bill would require that a notice of adverse action include a copy of the notice described above explaining the effect of dismissal on eligibility to take civil service examinations. It would require that a board decision in an adverse action include a finding stating the effect of the adverse action on the employee's eligibility to take civil service examinations. It also would require each state agency to establish a pool of supervisory employees who will be available to review an adverse action after attending State Personnel Board training, with these



individuals to be known as Skelly officers. It would prohibit a supervisory employee serving as a Skelly officer from reviewing an adverse action against an employee who works in the same ~~department~~ agency as that supervisory employee.

(4) Existing law prohibits discrimination in state civil service because of sex, race, religious creed, color, national origin, ancestry, marital status, physical disability, or mental disability.

This bill would require each state agency to track the costs that each department, division, or other unit of the agency incurs in connection with litigation of discrimination cases, and to submit this information to the Legislature ~~no later than~~ *in the agency's annual report or by* February 1 of each year. This bill would make the equal opportunity officer of each department responsible for monitoring and providing this information.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: no.

The people of the State of California do enact as follows:

- 1 SECTION 1. Section 18934 of the Government Code is
- 2 amended to read:
- 3 18934. (a) Every applicant for examination shall file a
- 4 formal signed application in the office of the board or a designated
- 5 appointing power within a reasonable length of time before the
- 6 date of examination. Blank application forms shall be furnished
- 7 without charge to all persons requesting them. These applications
- 8 when filed and all other examination materials, including
- 9 examination questions and booklets, are the property of the board
- 10 and are confidential records open to inspection only if and as
- 11 provided by board rule.
- 12 (b) The application form shall include a place for listing
- 13 volunteer experience and this experience shall be considered if it
- 14 is relevant to the position being applied for. Each form shall have
- 15 prominently displayed on its face the fact that volunteer
- 16 experience will be given consideration as qualifying experience
- 17 for state employment.
- 18 (c) The application form shall include, immediately after the
- 19 question asking if the applicant has ever been dismissed from state
- 20 civil service, the following statement: "If you have ever been
- 21 dismissed from state civil service, you are required to request and

1 receive permission from the Executive Officer of the State
2 Personnel Board prior to submitting this application.”

3 SEC. 2. Section 18941 is added to the Government Code, to
4 read:

5 18941. (a) For purposes of this section “Section 211” means
6 the board regulation restricting a dismissed employee from taking
7 civil service examinations, provided for pursuant to Section 211
8 of Title 2 of the California Code of Regulations.

9 (b) The board shall do all of the following:

10 (1) Provide, by rule, for grant of a blanket waiver under Section
11 211 that will allow a dismissed employee who meets standards to
12 be determined by the board to apply for any civil service
13 examination, so that he or she will not need a separate waiver for
14 each examination.

15 (2) Prepare a written notice that explains the effect of dismissal
16 from state employment on eligibility to take civil service
17 examinations, as stated in Section 211, and the process by which
18 a dismissed employee can compete in a civil service examination,
19 including any changes to that process required by this section.

20 (3) Provide a copy of the notice described in paragraph (2) to
21 any dismissed employee or former employee who has a pending
22 complaint or action alleging discrimination against a state
23 employer.

24 (4) Notwithstanding Section 18935, Section 211, or any other
25 provision of law, allow a dismissed employee who has applied for,
26 or taken, a civil service examination without obtaining the consent
27 of the executive officer of the board under Section 211, and who
28 would have been granted consent, to take the examination, or, if
29 the examination already has occurred, maintain his or her
30 placement on the ranking list.

31 SEC. 3. Section 19574 of the Government Code is amended
32 to read:

33 19574. (a) The appointing power, or its authorized
34 representative, may take adverse action against an employee for
35 one or more of the causes for discipline specified in this article.
36 Adverse action is valid only if a written notice is served on the
37 employee prior to the effective date of the action, as defined by
38 board rule. The notice shall be served upon the employee either
39 personally or by mail and shall include all of the following:

40 (1) A statement of the nature of the adverse action.



1 (2) The effective date of the action.

2 (3) A statement of the reasons therefor in ordinary language.

3 (4) A statement advising the employee of the right to answer
4 the notice orally or in writing.

5 (5) A statement advising the employee of the time within which
6 an appeal must be filed.

7 (6) A copy of the notice about the effect of dismissal on
8 eligibility to take civil service examinations, as specified in
9 Section 18941. The notice shall be filed with the board not later
10 than 15 calendar days after the effective date of the adverse action.

11 (b) Effective January 1, 1996, this subdivision shall apply only
12 to state employees in State Bargaining Unit 5. This section shall
13 not apply to discipline as defined by Section 19576.1.

14 (c) This subdivision shall apply only to state employees in State
15 Bargaining Unit 8. This section shall not apply to minor discipline,
16 as defined by Section 19576.5 or a memorandum of
17 understanding.

18 (d) This subdivision shall apply only to state employees in State
19 Bargaining Units 8, 12, and 13. If the provisions of this section are
20 in conflict with the provisions of a memorandum of understanding
21 reached pursuant to Section 3517.5, the memorandum of
22 understanding shall be controlling without further legislative
23 action, except that if the provisions of the memorandum of
24 understanding require the expenditure of funds, the provisions
25 may not become effective unless approved by the Legislature in
26 the annual Budget Act.

27 SEC. 4. Section 19574.3 is added to the Government Code, to
28 read:

29 19574.3. (a) Each state agency shall establish a pool of
30 Skelly officers, as defined by the State Personnel Board, for the
31 purpose of reviewing adverse actions. These Skelly officers shall
32 be trained by the State Personnel Board, and shall utilize the
33 standards developed and devised by the board to evaluate and rule
34 on adverse actions. Only those supervisory employees on the
35 established lists shall be used as Skelly officers for this purpose.
36 A supervisory employee serving as a Skelly officer may not review
37 an adverse action against an employee who works in the same
38 ~~department~~ agency as that supervisory employee.

39 (b) The Skelly officer conducting the review of the action,
40 upon the conclusion of the review, shall provide the employee

1 against whom the action was taken a complete copy thereof, and
2 shall disclose any affirmative defense the employee puts forth, as
3 well as the facts and findings of the Skelly officer related thereto.
4 Further, the Skelly officer shall note, in the review, any
5 contradiction between the action taken by the state agency and the
6 agency's policy.

7 SEC. 5. Section 19582 of the Government Code is amended
8 to read:

9 19582. (a) Hearings may be held by the board, or by any
10 authorized representative, but the board shall render the decision
11 that in its judgment is just and proper.

12 During a hearing, after the appointing authority has completed
13 the opening statement or the presentation of evidence, the
14 employee, without waiving his or her right to offer evidence in the
15 event the motion is not granted, may move for a dismissal of the
16 charges.

17 If it appears that the evidence presented supports the granting of
18 the motion as to some but not all of the issues involved in the
19 action, the board or the authorized representative shall grant the
20 motion as to those issues and the action shall proceed as to the
21 issues remaining. Despite the granting of the motion, no judgment
22 shall be entered prior to a final determination of the action on the
23 remaining issues, and shall be subject to final review and approval
24 by the board.

25 (b) If a contested case is heard by an authorized representative,
26 he or she shall prepare a proposed decision in a form that may be
27 adopted as the decision in the case. A copy of the proposed
28 decision shall be filed by the board as a public record and furnished
29 to each party within 10 days after the proposed decision is filed
30 with the board. The board itself may adopt the proposed decision
31 in its entirety, may remand the proposed decision, or may reduce
32 the adverse action set forth therein and adopt the balance of the
33 proposed decision.

34 (c) If the proposed decision is not remanded or adopted as
35 provided in subdivision (b), each party shall be notified of the
36 action, and the board itself may decide the case upon the record,
37 including the transcript, with or without taking any additional
38 evidence, or may refer the case to the same or another authorized
39 representative to take additional evidence. If the case is so assigned
40 to an authorized representative, he or she shall prepare a proposed

1 decision as provided in subdivision (b) upon the additional
2 evidence and the transcript and other papers that are part of the
3 record of the prior hearing. A copy of the proposed decision shall
4 be furnished to each party. The board itself shall decide no case
5 provided for in this subdivision without affording the parties the
6 opportunity to present oral and written argument before the board
7 itself. If additional oral evidence is introduced before the board
8 itself, no board member may vote unless he or she heard the
9 additional oral evidence.

10 (d) In arriving at a decision or a proposed decision, the board
11 or its authorized representative may consider any prior suspension
12 or suspensions of the appellant by authority of any appointing
13 power, or any prior proceedings under this article.

14 (e) The decision shall be in writing and contain findings of fact
15 and the adverse action, if any. The findings may be stated in the
16 language of the pleadings or by reference thereto. The decision
17 shall include a finding stating the effect of the adverse action on
18 the employee's eligibility to take civil service examinations.
19 Copies of the decision shall be served on the parties personally or
20 by mail.

21 (f) This section shall not apply to minor discipline, as defined
22 in a memorandum of understanding or by Section 19576.5, for
23 state employees in State Bargaining Unit 8.

24 (g) This section shall not apply to state employees in State
25 Bargaining Unit 11 who have been disciplined for positive drug
26 test results and who expressly waive appeal to the State Personnel
27 Board and invoke arbitration proceedings pursuant to a collective
28 bargaining agreement.

29 (h) This subdivision shall apply only to state employees in State
30 Bargaining Units 8, 12, and 13. If the provisions of this section are
31 in conflict with the provisions of a memorandum of understanding
32 reached pursuant to Section 3517.5, the memorandum of
33 understanding shall be controlling without further legislative
34 action, except that if the provisions of the memorandum of
35 understanding require the expenditure of funds, the provisions
36 may not become effective unless approved by the Legislature in
37 the annual Budget Act.

38 SEC. 6. Section 19707 is added to the Government Code, to
39 read:

1 19707. (a) Each agency secretary shall track the expenditures
2 incurred by each department within the agency on litigation
3 regarding discrimination cases, and shall report this amount to the
4 Legislature ~~on~~ *in the agency's annual report or by* February 1 of
5 each year.

6 (b) The equal employment opportunity officer of each
7 department shall be responsible for monitoring and providing the
8 information required by subdivision (a) directly to the director of
9 the department.

10 SEC. 7. Section 19708 is added to the Government Code, to
11 read:

12 19708. In performing his or her duties, each department's
13 equal employment opportunity officer shall report directly to the
14 director of the department, notwithstanding the regular chain of
15 command, in order to ensure the autonomy and impartiality of
16 equal employment opportunity officers in the evaluation of
17 situations.

